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7
8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1H 2007 121

11 AARON JOHN HALLMARK
12 150 Brayton Loop
Yuba City CA 95993

A C C U S A T I O N

13
14 Respiratory Care Practitioner license No. 21719

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs.

22 2. On or about October 23, 2000, the Respiratory Care Board issued
23 Respiratory Care Practitioner License Number 21719 to Aaron John Hallmark (Respondent).
24 The Respiratory Care Practitioner License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on July 31, 2008, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction."

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500)."

"(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner."

7. Section 3750.5 of the Code states:

"In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

1 "(a) Obtained or possessed in violation of law, or except as directed by a licensed
2 physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or
3 administered to another, any controlled substances as defined in Division 10 (commencing with
4 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
5 (commencing with section 4015) of Chapter 9 of this code."

6 8. Section 3752 of the Code states:

7 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
8 made to a charge of any offense which substantially relates to the qualifications,
9 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
10 the meaning of this article. The board shall order the license suspended or revoked, or
11 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
12 conviction has been affirmed on appeal or when an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent order under Section
14 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
15 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
16 accusation, information, or indictment."

17 9. Section 3755 of the Code states:

18 "The board may take action against any respiratory care practitioner who is
19 charged with unprofessional conduct in administering, or attempting to administer, direct
20 or indirect respiratory care. Unprofessional conduct includes, but is not limited to,
21 repeated acts of clearly administering directly or indirectly inappropriate or unsafe
22 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or
23 monitoring techniques, and violation of any provision of Section 3750. The board may
24 determine unprofessional conduct involving any and all aspects of respiratory care
25 performed by anyone licensed as a respiratory care practitioner. Any person who engages
26 in repeated acts of unprofessional conduct shall be guilty of a misdemeanor and shall be
27 punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment
28 for a term not to exceed six months, or by both that fine and imprisonment."

10. California Code of Regulations, title 16, section 1399.370, states:

“For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.

“(b) Conviction of a crime involving fiscal dishonesty, theft, or larceny.”

COST RECOVERY

11. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

12. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

13. Section 3753.1 of the Code states:

"(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation. "

FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Unprofessional conduct)

14. Respondent is subject to disciplinary action under sections 3750(j) [dishonest act] and 3755 [unprofessional conduct] in that he mis-used his position as a

1 respiratory care practitioner to steal controlled substances from a patient. The circumstances are
2 as follows:

3 15. On or about March 2007, respondent was employed as a respiratory care
4 practitioner at Rideout Hospital in Marysville, California. On or about March 21, 2007 at about
5 6:00 p.m., respondent went to Patient A's home when he knew that Patient A. was in the
6 hospital. He spoke to Patient A.'s husband, F.J. Respondent stated that he was a home health
7 care worker from Rideout Hospital, when in fact respondent was not. Respondent offered to do a
8 "complimentary prescription evaluation" to make sure that none of F.J.'s or his wife's
9 prescriptions would counter act each other.

10 16. While respondent examined the medications, F.J. answered a telephone
11 call and left respondent alone. After F.J. finished the telephone call, respondent said he had all
12 the information he needed, and respondent left the house. F.J. then noticed a prescription bottle
13 was missing, and he called Rideout Hospital, asking for information on the home health care
14 worker who had just left his house. F.J. was informed that Rideout did not send anyone to his
15 house. F.J. then called the Sheriff's Department.

16 17. F.J. and Sutter County Sheriff Clifton Bowman went to Rideout Hospital,
17 where F.J. positively identified respondent as the man who came to his house and offered to
18 evaluate his prescriptions.

19 18. Based on F.J.'s positive identification, Sheriff Bowman took respondent
20 into custody. During a search of respondent's backpack, Sheriff Bowman found an unlabeled
21 bottle of pills. Respondent stated that the pills were for his high blood pressure, and he had
22 transferred the pills out of the original labeled bottle into a smaller unlabeled bottle. Sheriff
23 Bowman learned that the pills were Pentazoline, a narcotic painkiller which is Schedule 4
24 controlled substance. Respondent was advised of his Miranda rights, and Sheriff Bowman
25 informed respondent that the pills were Pentazoline. Respondent admitted that he lied, and told
26 the Sheriff that he bought the pills from a drug dealer. After further questioning, respondent
27 finally admitted that he took the pills from F.J.'s house when he pretended to be a home health
28 care worker earlier that day.

1 19. Respondent's license is subject to discipline based on his dishonesty and
2 unprofessional conduct in impersonating a home health care worker to steal controlled
3 substances from a patient.

4 SECOND CAUSE FOR DISCIPLINE

5 (Conviction; Possession of a controlled substance)

6 20. Paragraphs 14 through and including 18 hereinabove are incorporated by
7 reference.

8 21. Respondent is subject to disciplinary action under sections 3750(d), 3752
9 and CCR 1399.370(b) [theft conviction], 3750.5(a) [possession of a controlled substance] in that
10 he was convicted of violating Penal Code section 484, theft, and placed into a diversion program
11 for violating Health and Safety Code section 11350(a), possession of a controlled substance. The
12 circumstances are as follows:

13 22. On or about April 18, 2007, a criminal complaint titled *People of the State*
14 *of California vs. Aaron John Hallmark*, case no. CRF-07-1142, was filed in Superior Court,
15 Sutter County. Count 1 charged respondent with a violation of Health and Safety Code section
16 11350(a)¹, possession of pentazoline, a controlled substance. Count 2 charged respondent with a
17 violation of Penal Code section 496(a), receiving or possessing stolen property. On June 6, 2007,
18 Count 3 was added, which alleged a violation of Penal Code section 484², theft, a misdemeanor.

19 23. On or about June 6, 2007, respondent entered a plea of no contest to a
20 violation of Health and Safety Code section 11350(a), possession of pentazoline, a controlled
21 substance. On that same date, he was convicted of a violation of Penal Code section 484, theft, a
22

23 1. Health and Safety Code section 11350(a) states in pertinent part: "...every person who
24 possesses any controlled substance...classified in Schedule III, IV, or V which is a narcotic
25 drug, unless upon the written prescription of a physician licensed to practice in this state, shall
be punished by imprisonment in the state prison."

26 2. Penal Code section 484 states in pertinent part: "(a) every person who shall feloniously
27 steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently
28 appropriate property which has been entrusted to him or her, or who shall knowingly and
designedly, by any false or fraudulent representation or pretense, defraud any other person of
...real or personal property...is guilty of theft."

1 misdemeanor. He was placed on two years summary probation; received one day jail time with
2 credit for one day served; ordered to pay fines, and submit to searches. On or about July 16,
3 2007, he was granted deferred entry of judgment for eighteen months for violation of Health and
4 Safety Code section 11350(a).

5 24. Therefore, respondent's license is subject to discipline based on his
6 substantially-related convictions for violating Penal Code section 484, theft, and Health and
7 Safety Code section 11350(a), possession of a controlled substance.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

11 1. Revoking or suspending Respiratory Care Practitioner License Number
12 21719, issued to Aaron John Hallmark.

13 2. Ordering Aaron John Hallmark to pay the Respiratory Care Board the
14 costs of the investigation and enforcement of this case, and if placed on probation, the costs of
15 probation monitoring;

16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: January 15, 2008

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20 Original signed by Liane Zimmerman for:
21 STEPHANIE NUNEZ
22 Executive Officer
23 Respiratory Care Board of California
24 Department of Consumer Affairs
25 State of California
26 Complainant

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